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Honorable Joseph F. Bianco
United States District Court Judge
Eastern District of New York
1040 Federal Plaza
Central Islip, New York 11722

Re: USA v. Hector Torres
Docket No.: 12-CR-063(S-5) (JFB)

Sentencing Memorandum and Psychosocial Report

Dear Judge Bianco,

This Sentencing Memorandum is submitted on behalf of the defendant Hector Torres in order to supplement the Pre-Sentence Investigation Report (PSR). For the reasons set forth below, it is respectfully requested that defendant be given a non-Guidelines or variance sentence below the applicable sentencing range; or in the alternative, that the Court downwardly depart from the Guidelines table.

Letters from Relatives and Friends

Letters from the defendant's relatives and friends will be submitted under separate cover. While they speak for themselves, they clearly express the respect and affection felt for the defendant and the willingness to support him. *See e.g. United States v. Hernandez-Castillo*, No. 05 Cr. 1033 (RWS), 2007 WL 1686686, at *5 (S.D.N.Y. Jun. 7, 2007) ("Also pursuant to § 3553(a)(1), the Court takes note of the significant network of friends and family that is ready to support Hernandez-Castillo upon his release from prison").

Discussion

Post-Booker Sentencing

The Supreme Court held in *United States v. Booker*, 543 U.S. 220 (2005), that the mandatory nature of the United States Sentencing Guidelines violated the Sixth Amendment. This left 18 U.S.C. § 3553(a) in effect and assigned greater significance to the factors annunciated in that section. The Supreme Court and our Circuit have confirmed that under the advisory Guidelines regime, "a sentencing judge has very wide latitude to decide the proper degree of punishment for an individual offender and a particular crime." *United States v. Cavera*, 550 F.3d 180, 188 (2d Cir.2008); *see also Gall v. United States*, 552 U.S. 38 (2007).

The Supreme Court's holding(s) in *Gall* are particularly relevant in this case. There, the

Supreme Court articulated the more reasonable sentencing philosophy:

As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the §3553(a) factors to determine whether they support the sentence requested by a party. In so doing, *he may not presume that the Guidelines range is reasonable ... He must make an individualized assessment based on the facts presented.* If he decides that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance.

As the leading precedents make clear, *post-Booker*, sentencing courts retain their discretion to depart or vary from the Sentencing Guidelines. The Guidelines have now been replaced by nuanced, individualized assessment, guided by the factors set out in Section 3553(a); the underlying principle is reasonableness and a sentence should not be greater than necessary to achieve its purpose. Finally, and perhaps most critically, the Guidelines are not presumed to be reasonable, and a sentence below the Guidelines range is plainly not defective.

Factors Warranting a Non-Guidelines Sentence

On April 29, 2010, the U.S. Sentencing Commission submitted to Congress its annual proposed amendments to the U.S. Sentencing Guidelines. Unless Congress intervened, the proposed amendments became effective November 1st. In addition to some miscellaneous and technical amendments, the 2010 amendments proposed changes to the Guidelines, accompanying policy statements, and official commentary sections. Most of the recommended changes could in some cases actually reduce penalties and allow more opportunities for probationary sentences.

Two such amendments relate to Chapter Five of the Guidelines, which is the basic framework for determining an appropriate sentence. In proposing the amendment to Part A of Chapter Five, the commission expanded the availability of alternatives to incarceration.

The second amendment to Chapter Five of the Guidelines relates to Part H, specific offender characteristics. This amendment, which appears to be a response to *Gall v. United States*, replaces the existing introductory commentary with a more detailed framework for courts to utilize when considering specific offender characteristics. Generally, the revised introductory commentary directs courts to consider specific offender characteristics when determining a sentence within the applicable guidelines range and not as a means to assign a sentence outside of the applicable range. The amendment to Part H also removes the previous admonition in several of the substantive provisions that deemed specific offender characteristics not ordinarily relevant.

Given the above, a sentence below the Guidelines range is justified here for the following compelling reasons:

Interviewees:

- Hector Torres
- Lillian Ayala, mother
- Rosa Ayala, maternal grandmother
- Jose Antonio Ayala, uncle
- Edwin Ayala, uncle
- Marina Castro, aunt
- Amy Castro, cousin
- Jesus Alfaro, stepfather
- Karen Alfaro, step cousin
- Delia Ventura, friend's mother
- Yesenia Hernandez, friend's mother
- Daniel Bono, ex-supervisor
- Sonia Velasquez, step aunt

Review of the following records:

- Social Security Earning statement
- School Records from Brentwood School District
- School records from Alief Learning Center
- School records from Braeburn Elementary School
- Oak Park Elementary School
- Medical record from Memorial Hermann Hospital
- Southside Hospital
- Discovery provided by the government

Introduction

Hector Torres is a 28-year-old Hispanic male who has been incarcerated since his arrest while he awaits sentencing on murder and conspiracy charges. Hector has been forthcoming with his social history but the conditions under which he was held had hampered the worker's ability to conduct a private and open discussion with him. He nonetheless expresses regrets as to the events in his life that resulted in his arrest, and indicated that becoming a father had influenced a change in attitude and direction in his life.

Family History

Hector Torres was born on July 11, 1991 to the union of Lilian Ayala and Jose Vidal Torres. There was no information available about Jose Torres, Hector's father. He has not played any meaningful role in Hector's life and the only father figure that Hector knows is Jesus Alfaro who has been in his life since he was nine months old. To get a fuller understanding of the forces that helped to shape Hector's life it was important to start with the history of the parents who raised him.

Lilian, Hector's mother, was born on June 13, 1973 in Usulután, El Salvador. She is the second of four children born to the union of Rosa Ayala and Antonio Benavidez. Lilian's siblings in birth order are Marina Delores Castro (6/28/69); Jose Antonio Ayala (9/14/71) and Edwin Ayala (11/7/77). Hector's maternal grandmother, Rosa Ayala was born on May 15, 1945. She only has a third-grade education and does not speak any English. Rosa, who was Hector's primary caregiver during his early childhood, stated that her life has been filled with so much anguish that she felt sometimes that it was better she had not been born. Rosa's feelings begin with the memories of her life in El Salvador.

Rosa's parents were peasants who worked in the coffee fields to provide for the family. As a child, Rosa had to help in the coffee fields at harvest time. Despite the hard work by Rosa's parents there was never enough to eat and so Rosa and her siblings would go to bed hungry. The pangs of hunger sometimes made it hard to sleep. There were other worries that also made living difficult for Rosa. These worries include the loss of her mother. Rosa's mother died under suspicious circumstances when she, Rosa, was 13 years old. After her mother's death, it was up to Rosa and her sister with the help of their father, to keep the family together. This was extremely difficult. Rosa stated of the five children born to her parents, she is the only survivor, as her three brothers and one sister have all died.

Rosa became romantically involved with Antonio Benavidez, whom she knew from childhood. Their relationship started out on a positive note, with both of them working as farmers in the corn and bean fields. After a while, however, Rosa discovered that Antonio was being unfaithful to her. Antonio was also physically and emotionally abusive. Rosa recalled that Antonio would beat her for no apparent reason. These beatings were extremely brutal, as Antonio would even throw her to the ground in front of the children. Rosa said Antonio abandoned her for another woman when her last child, Edwin, was only one year old. She did not receive any support from Antonio after he abandoned her and the children,

The hardship that characterized Rosa's life was a legacy she passed on to her own children. Lilian (Hector's mother) recalled an impoverished life in El Salvador. According to Lilian, she grew up in a hut made of mud and wood. Lilian credits her mother (Rosa) for not abandoning the children. Lilian said Rosa worked hard in the coffee fields in order to provide food for the family. Rosa further supplemented her income by selling fruits, vegetables, candy and pastries in the town square. Both Lilian and her mother not only cited the economic hardship associated with Antonio's abandonment, but also extraordinary despair that overtook their lives as they were left without a sense of protection. This despair was understandable, given that Antonio's abandonment occurred around the time the El Salvador Civil War started.

Lilian was 7 years old at the start of the El Salvador Civil War. Historical and newspaper reports generally agree that the El Salvador Civil War lasted twelve years (1980- 1992). Lilian can

still recall the horrors of the war. She witnessed many murders that occurred in the streets. Lilian noted that the civil war violence was hardly separable from the emergence of gang warfare, as Salvadorians were divided and forced to choose sides or die. Reports available online corroborate that the war was brutal, bitter, and bloody in its impact on the lives of Salvadorians. Not only were there killings of innocent people, but there were thieves who would pillage the villages, robbing homes and taking away the meager provision that the families had. If there was no “cash” they would take “kind”. The war claimed over 100,000 lives. Thousands more were left to mourn their dead and pick up the pieces of their shattered lives. The numbers of dead and displaced individuals included children.

During the war thousands of Salvadorians tried to escape by going to the United States; a move that did not necessarily resolve the inner trauma many carried with them. For Rosa and her children, the traumatized emotions came to the United States with them. Edwin, who is younger than Lilian, also refers to horrific images of the war that continues to haunt him years later. He recalled the dead bodies on the streets, and the decapitated heads hoisted on sticks and paraded by warring factions in order to inflict fear in the hearts of the living. Marina Castro, Hector’s maternal aunt, also has vivid memories of the war and its impact on family members. Dead and rotting bodies were everywhere, she remarked. She recalled that either the guerillas or the thugs would invade the home and take whatever they wanted.

Lilian indicated that the most traumatic episode of her childhood occurred when she was 11 years old. She was terrified when her home was invaded by the pro-government soldiers who took her and family members out the home. She recalled one of the men saying that he was taking her with them and that they would kill her mother and brother. Lilian knew that the soldiers were going to rape her and the kill her, as this was the practice of many of the fighters. Lilian remembered that in the hopeless agony of the moment, her mother told the soldiers to kill them all. Just then a car approached with very bright lights and the men ceased what they were doing. The men, however, warned that they would be back the following day and wanted 300 pesos or they would certainly kill the family. Lilian said her aunt, Maria Gomez, borrowed money from the neighbors in order to pay off the men when they returned the following day.

It was shortly after the terrifying home invasion Lilian spoke about that her mother, Rosa, decided to escape to the United States. This involved journeying through Mexico; a path that was itself fraught with danger. Rosa decided that she would go by herself first, and so she left for the United States in 1986. Upon making to Texas, Rosa worked as a domestic help, earning as little as \$200.00 per week, but she saved everything that she could. In 1987, Rosa returned to El Salvador to get her daughter Marina and Marina’s husband, Zoe Castro. Lilian and Edwin were left in the care of their aunt Maria for about a year before Rosa went and got them. Lilian remarked that her aunt treated her well, but the family was so poor that she would often go to bed hungry.

Rosa expressed pride in her efforts to bring all her children to the United States. It was in 1988 that she returned for Lilian and Edwin. Then in 1989 she went back for Antonio, but got stuck in Guatemala and had to return to El Salvador. She eventually paid \$5000.00 for Antonio to be brought to the US by a smuggler.

Lilian was 15 years old when she came to the United States. The family settled in Houston, Texas where her mother had been living. It was a difficult transition hit them right away as they could not speak English. A more obstructive barrier Edwin cited, however, was the home conditions into which he and Lilian were brought. When they joined their mother, she was living with a Mexican man named Zacaria Alviso. “He was a bad person” Edwin remarked, adding that Alviso was an alcoholic who was abusive. Edwin became emotional when recalling the abuse that his mother, he and Lilian suffered at Alviso’s hands. Edwin noticed that his mother was dependent on Alviso for survival because she was not working. He surmised that given his mother’s dependence, it appeared Alviso felt he could abuse her and her children.

Apart from being beaten, Edwin and Lilian were locked out of the house frequently, which resulted in them sleeping outside numerous times. Edwin felt shattered by how his mother,

whom he described as having more guts than the average man, would be abused by Alviso because of her need for food and shelter. Edwin said that the bad situation at home led to him getting into trouble. Edwin started playing hooky from school and joined a gang.

Lilian was also challenged. Having only reached the fifth grade in her native El Salvador, she struggled academically after migrating to the United States. According to Lilian, she initially attended Marshall High School, and she later attended Jefferson David High School from which she dropped out. Like her brother, Edwin, her ability to do well in school was affected by the abusive conditions at home. As such, Lilian's focus was not on school but on how she could get away from home.

Lilian's wish to escape the conditions at her mother's home led her to taking a chance on Jose Vidal Torres (Hector's father). Jose was also Salvadorian and impressed Lilian as willing to rescue and care for her. Jose, who was approximately eleven years older than Lilian; a fact that enhanced the trusty impression Lilian had of him. Lilian recalled that Jose treated her well in the beginning and her family felt Jose was well intentioned in his motives. This made it easier for Lilian's family to accept Jose's offer of taking Lilian with him to New York, where he had a job waiting for him. It was devastating for Lilian, therefore, when Jose started to abuse her after she accompanied him to New York.

The fear of abuse was part of Lilian's life while she was pregnant with Hector. Lilian said she did not have any health complications during pregnancy, but she was in a lot of emotional pain. She blamed her distress on the heartless way Jose treated her. Lilian stated that Jose promised to assist her financially and to help her resume her education, but, after they moved to Long Island, Jose reneged on his promise of support. "I suffered so much," Lilian remarked, as she recalled the worry of leaving her mother and moving to a place where she knew no one.

In the midst of the despair, Lilian met Jesus Alfaro, with whom she continues to have a common law marriage. Hector was nine months old when Lilian became involved with Jesus. She credits Jesus for being the only father figure Hector has ever known. She praises Jesus for assisting her financially and emotionally. Nevertheless, she acknowledges that as with her previous relationship with Hector's father, Jose, her relationship with Jesus soon became problematic. She said her relationship with Jesus has been marked by infidelity and separations.

Jesus, like Lilian, was born and raised in El Salvador. He was born on December 25, 1976 and carried with him the memories of the atrocities that he witnessed during the El Salvador civil war. His most significant memory of the war was when his father was accused of being a part of the guerrillas and then murdered by members of the ruling party. Jesus remembered that he was about 10 or 11 years old when his father was murdered. Jesus had to accompany members of his family to retrieve his father's body. His father's murder and the void that it left in the family caused a lot of "tribulations" for the family. He remembered that two older brothers were murdered as well.

It was in 1990, when he was 14 years old, that Jesus along with a cousin, traveled through Mexico to join his older sisters who were already living in New York. Claribel Velasquez was the sister who provided the funds for Jesus to travel to the United States. "I brought him up because of the war," she remarked. Two years after Jesus arrived in the United States he met Lilian. "We were very young," Jesus remarked (He was only 16 years old at the time) "but we liked each other; and even though she had a child I felt she was a good woman."

Early Childhood

Jesus indicated that his relationship with Lilian may have contributed to Hector not getting any support from his father, Jose. Jesus reported that after he moved in with Lilian, Jose ceased paying regular child support. Claribel, Jesus's sister, recalls that Hector was about eight months old when his mother moved in with Jesus. According to Claribel, she was living at the home, too, and it was her impression that Lilian and Jesus had a good relationship. Claribel also has vivid memories of

Hector as an infant. She remembers that Hector was very quiet as, unlike infants his age, he rarely cried. She added that Hector seemed satisfied with whatever toy he was given to play with.

According to Lilian, Hector attained his developmental milestones within the normal age. He took his first steps when he was 13 months, was potty trained at 18 months, and was talking and dressing himself by the time he was 2 years old. Unfortunately, the early disruptions in Hector's life threatened Hector's ability to make progress as he grew older. Not only had his parents separated shortly before or after he was born, there were also early problems in the relationship between his mother and Jesus that made Hector's early childhood unstable. For instance, Lilian was pregnant with her second child when she found out that Jesus was cheating on her. This prompted Lilian to take Hector and return to Texas.

Hector's earliest memories were formed while living in Texas. These were good memories that he had of a loving maternal family headed by his grandmother, Rosa Ayala. Rosa confirmed that Hector's early childhood was spent in Houston, Texas, where he lived with her. She remarked that much of Hector's adjustment problems stemmed from the unstable relationship that her daughter shared with Jesus. Marina Castro, referred to earlier, said that Hector was only 18 months old when Lilian came back home. What struck Marina about Hector's demeanor was how extraordinarily quiet he was. "He was shy, timid, almost an introvert." Marina stated. "He used to smile a lot; not give any problems at all," she stated further.

While Hector lived with Rosa, she operated a day care in the home. This meant that in addition to her grandchildren, Rosa cared for kids in the neighborhood. This created a fun-filled atmosphere which Hector remembers with fondness. Hector preferred the living situation with his grandmother because family members lived in very close proximity to each other. This family arrangement was reassuring for Hector after the move from New York.

Family members in Texas agreed that Hector's early life in Houston was a happy one. His cousin, Amy Castro, who is a year younger than Hector, said that they were more like siblings than cousins.

Amy recalled how important family was to Hector, as he preferred to be with family rather than with outsiders. "He was a good kid but he was nerdy with his glasses and his little hair cut" Amy recalled with humor. Noe Castro, Hector's uncle in law, is another family member who observed that Hector was extremely quiet and well behaved. Noe confirmed that Hector was 18 months old when he was brought to Texas and his quiet nature is what everyone noticed. Family members did not indicate that they were worried about Hector's quietness. They all felt that whatever problems Hector had later in life was a result of his move to New York.

While Rosa's home in Houston offered Hector some consistency, his mother's life was unsettled. Lilian reportedly spent a lot of time in Houston, but she also admits she travelled back and forth between Houston and New York, depending on the state of her relationship with Jesus. Lilian said it seemed as though each time she came back to New York she and Jesus would have an argument that causes her to return to Houston. Lilian and Jesus have three children together. These children in birth order are Jonathan Ayala (8/9/93, Odaly Ayala (5/6/96), and Jordy Alfaro (11/21/2000). Jonathan and Odaly were born in Houston, Texas and Jordy was born in New York.

Hector, Jonathan and Odaly all lived in Houston with their grandmother. This living arrangement proved beneficial to Lilian as it enabled her to work, while having her mother care for her children. Lilian admitted that her work and her travels back and forth to New York limited her availability to Hector. She remarked that ever since she first moved to New York she has been working long hours in order to provide for her family; and this was the same ethos she had during the time she lived in Texas. She remarked that she has worked upwards of 80 hours per week.

Lilian said her first job was at a factory called the Cookie Company. From that factory, she went to work at a plastic utensils factory, and then to a factory that made teddy bears. Following her move to Texas, Lilian worked at a Dry Cleaning establishment, a factory that made painted cups, and a store decorator that made Christmas decorations. She also recalled having a job at Randall Store

where she worked in the kitchen preparing fruits and vegetables.

A Difficult Transition to New York

Deciding on where to settle was difficult proposition for Lilian and Jesus. Lilian said she loved the comfort of knowing that she was close to family in Texas. Jesus's family, however, was in New York where he felt more at home. Noe Castro recalled that Jesus came to Houston and remained for a couple of months before deciding to return to New York. It was then that Jesus, Lilian and the three children including Hector returned to New York.

Hector was about eight years old when he left his maternal family in Texas. It was an emotional separation for him. "I remember the day I came to New York," he remarked, adding that his grandmother did not want him to leave and she cried when he was leaving. Hector recalled that when he first arrived in Long Island, his mother was living on Hilltop Street in Brentwood. School records indicated that Hector was first enrolled in the school system, he was treated as an outsider and attacked by other kids on a regular basis. His small size and nerdy look made him an easy target. Also, according to Hector, he lacked awareness of some of the colors and symbolism associated with gangs in Brentwood. He noticed, however, that when he wore certain colors, he would be accused of being in a gang even before he was actually in a gang. He did not find school to be a safe place. He recalled that his main antagonists were the Bloods.

Even while he was attacked by fellow students, it appears that Hector maintained the same meek persona for which he was known back in Texas. On a report card dated April 3, 2000, his bi-lingual teachers, Mrs. Hidalgo and Ms. White, commented that Hector was a courteous and capable student, but was not able to complete his tasks in the time allowed. Other comments suggested a similar theme of Hector being obedient and diligent, but that he required additional help to measure up to grade level.

In the fourth grade Hector's teachers, Ms. Melendez and Ms. Numphius noted that Hector was quiet and shy, but it was a pleasure to have him in their class. They felt that his shyness and inability to speak up may have affected his ability to perform better in his studies. Thus, he was retained in the fourth grade. In December of 2001, when Hector was 10 years old, he was diagnosed with astigmatism and amblyopia or 'lazy eye' requiring him to wear glasses at all times.

OCFS Intervention

Hector's need for glasses, while he lived with his mother, led to the intervention of the Office of Children and Family Services (OCFS) on January 9, 2002. Records from OCFS indicated that Hector's need for glasses had been going unheeded by his mother, Lillian; despite "numerous efforts" by the school to inform her that Hector had a "serious vision problem," that was affecting his ability to see clearly and to complete school work. The investigation into Lilian's guardianship of Hector was based on allegations of educational neglect, lack of medical care, and inadequate guardianship. Of note, is that Lilian was the only subject of the allegations, as Hector's stepfather, Jesus Alfaro, though mistakenly identified in the OCFS report as the biological father, was listed as having no role. Another household member, Abel Alfaro, was also listed as having no role.

The OCFS investigation took three months, closing on March 4, 2002 after the allegations were substantiated and the OCFS was satisfied that corrective measures were undertaken (provision of optometry care and glasses). Based on information from his school records, Hector's performance appeared to improve after he began wearing glasses. It was observed that Hector had made progress and only needed to develop more confidence and to participate more in class. By the time Hector made it to the fifth grade, he was no longer in need of bi-lingual services. He was seen as a shy boy with enormous potential. It was noted by his teacher, Mr. Wolf that with-a great deal of praise and attention, Hector's self-confidence could be raised enough for him to be very successful in

his education.

Significant Turning Point for Hector

When he was 12 years old, Hector was Jumped by four men of the Bloods gang. The significance of this attack as opposed to previous times was that the beating was so severe that the police were called. Hector said he was asked by a female cop if he had defended himself, and he answered in the affirmative. The cop told him that there was nothing she could do to help him. "I felt the cops were not there to help me" he remarked. A couple days after this incident, he was approached by a group of guys who wanted to know who had been jumped by the Bloods. His best friend at the time, Jonathan Lazo, pointed out that it was Hector. These guys went in search of members of the Bloods whom they eventually assaulted. About a month afterwards, Hector asked to be jumped into the MS-13 gang because he felt the gang would offer him the protection the cops denied him.

While he may have had a feeling of protection from the MS-13 gang, his decision to become a member also had consequences for him; particularly in school where he faced significant disciplinary challenges. He also came to realize that he remained a target because rival gang members would test his toughness. When he was 14 years old he was assaulted once again and ended up in the hospital. His mother recalled that he was knocked unconscious and suffered severe injuries to his head. Following this incident, Hector's conduct took a downward spiral. His disciplinary record was marked with suspensions for a number of infractions; including possession of gang colors and gang items, as well as defacing of school property.

Hector's disciplinary problems led his mother to send him back to family members in Houston in 2006. Hector was happy for the chance to return to the home of his childhood. He was to be disappointed however, because things were not as smooth in Houston as he had hoped for. He was "bounced around to different family members." Hector was closest to his uncle Edwin, but a decision was made to put him with Antonio, who had a bigger house and was better able to accommodate him. Antonio, an uncompromising disciplinarian, was harsh in his interaction with Hector while failing to make Hector feel like he had a caring and protective home. However, Hector recalled working alongside with Antonio doing carpentry and painting. He also worked with his uncle Edwin on the weekends doing carpet cleaning. In addition to working with his uncles, he also assisted his grandmother in the shop she operated from home.

Along with whatever part-time jobs that Hector had with his uncles, he was also enrolled in school. He attended school at Alief Learning Center, an alternative school designed for children with behavioral and learning problems. Hector's records from Alief did not indicate that he had any disciplinary problems. Moreover, during a brief meeting with personnel from the school, they did not recall him being a problem student. However, Hector reports that due to his affiliation with the MS-13 gang, which was symbolized by his tattoos, he was challenged on many occasions by members of rival gangs. This affected the relationship that he would have liked to share with his cousins; particularly Noe Jr. and Amy Castro, both of whom were of similar age to Hector. Noe Sr. remarked that he and his wife Marina were specifically asked to take Hector into their home; as it was felt that given the closeness he had with his cousins, and the fact that they were doing so well, it would have been beneficial for Hector to live with them. Noe said he did not agree to take Hector because he feared that his children would be adversely affected by this arrangement. Noe Sr. now harbors a sense of guilt that he did not respond in a positive way to Lilian's request when she was obviously reaching out for help.

After being in Houston for about six months, Hector decided that he wanted to return to New York. According to Hector, the gang situation in Texas was even worse than it was in New York. He said that Alief Learning Center was more akin to a jail than a school. He said there was no supervision by teachers or administrators at Alief, and as such there was a 'free for all' atmosphere in the school. The uncertainty in his living situation did not bode well for the stability that Hector needed, and so he returned to New York. When he returned to New York, his mother was still living in the

Brentwood community of Long Island. Sadly, life in the community had not improved, which meant that Hector was tested-again by the gang activity that pervaded the area.

While Hector's school performance was negatively affected by gang activity, at home with his stepfamily, he remained the courteous, obedient and a quiet kid that everyone knew. Jesus Alfaro, Hector's stepfather said that Hector respected him as a father. "He was a good son and brother. He was excellent in the home," Jesus remarked. Jesus admitted that he was not aware of Hector's actions on the streets. Jesus explained that he was working very long hours; and thus was not able to be as involved in the lives of the children as he would have liked. Jesus said Hector did tell him about being jumped, but Jesus said he did not know it was gang related. Jesus said he started to notice that Hector was wearing tattoos and was staying out more. Jesus could not say, however, what steps he took to address what seemed like a troubling turn in Hector's life.

Hector indicated that he has always shown his stepfather respect, but did not feel that Jesus was a true father figure. Hector explained Jesus did not interact with the kids as a father would. This is an observation that Amy made when she spent time with the family in Long Island. She recalled that Jesus was hardly home and when he was, he was usually in his room. Lilian remarked that though Jesus was the only father Hector ever knew, Hector never called Jesus 'dad'. That is so because, according to Hector, Jesus never made him feel like a son. Hector acknowledged that his step relatives tried to make him feel a part of the family, but it was not lost on him that he had no father in his life. Although Hector and his brother Jonathan were close, Hector said Jonathan would tell him that he, Hector, had no father. This made Hector wish for his father and it impacted on the bonding that he had with other males. Hector recalled that the closest male bonding he had was with his best friend, Jonathan Lazo a/k/a Spooky.

Traumatized by Friend's Death

Delia Ventura, Lazo's mother, confirmed the close bond between Hector and Lazo. She said they were like husband and wife. "They did everything together." The close relationship between the two boys may have been rooted in their shared experience. Like Hector, Lazo's father abandoned him and his mother when he was 2 years old. "It affected my son a lot that his father left me." Delia remarked. She stated that Lazo often said he wanted to work so he could buy her a house and a car. She added however, that the environment in the community and in the school were at times challenging for Lazo. "He had problems the first day he went to middle school," she remarked; adding that Hector would protect Lazo and Jonathan in school like a big brother would protect a little brother.

In his desire to protect Jonathan and Lazo, Hector tried to shield them from gang activity. Although Hector had sought out gang membership as a means of having protection he tried to safeguard Lazo from the same fate. It was in his quest to protect Lazo that Hector is racked with guilt over his friend's death. In recalling Lazo's death, Hector was emotional, stating that he blames himself for Lazo's death. Hector said he was with Lazo hours before the latter was killed. Hector recalled that some of his gang associates wanted to steal cars and Lazo wanted to join them. Hector refused to take "Spooky" with him, but Lazo got into another vehicle with some other guys.

A couple hours later, Hector went to another friend's house where he was to meet up with Lazo. After waiting for a while, he decided to go home, and, on his way, he saw a helicopter and several police cars. This scene indicated to him that there was a serious accident. The following morning Hector was awakened by his brother, Jonathan, who informed him that Lazo was injured in an accident and hospitalized. Hector rushed to the hospital where Lazo was on life support. He was present when Lazo died on August 3, 2008.

Delia recalled Hector saying that it should have been him, and not Lazo to die. "I hugged him and told him that God knows best. I know how much my son loved him and how much he loved my son," she remarked. Delia recalled being at her son's bedside when the plug was pulled. She said that Lazo had given her a squeeze of her hand when she told him to accept God before he died. She

tried to pass on some consolation to Hector that her son was in a better place. Karen Alfaro, Hector's cousin in law, was present at Lazo's funeral and recalled how Hector would just stand and stare at his friend's body. "He would look at him and then go outside and go back and look at him. "He was devastated" she remarked.

Hector admits that he was filled with a lot of anger and bitterness after Lazo's death. He stated that he felt so guilty that he did not want to live. "Why couldn't it be me?" was the question that he asked himself. He said that he got into a lot of altercations when rival gang members would disparage Lazo or say something snide regarding his death. "I would get mad and fought" he remarked. He said that he would visit Lazo's home to "feel his presence." Delia remembers Hector coming by, showing the same respect that he always did while her son was alive. She recalled offering Hector \$20.00, but he told her that he respected her too much to take the money from her because at the time he would have used it to buy weed. "He would not take my money because he loved me like he loved my son," she remarked. "I use that as an example with the young people at my church" she went on to say. She recalled how devoted Hector was to his friend's child, providing emotional and financial support for the child who was born after Lazo's death.

Hector the Father

Hector is the father of Breyden Torres, born March 16, 2011. Yesenia Hernandez is the mother of Breyden. She met Hector through her friend Karen and was impressed by how respectful he was towards her. She said Hector was not aggressive with her. She said that she was aware of his gang affiliation but, after they started dating in 2009, he was with her much more than he was with his friends. She said that after she became pregnant with their son, Hector lost interest in being a part of the gang, and he tried to stay away from gang activity. She recalled Hector saying that he wanted to be there for his son and did not want his son to go through the pain of not having a father. "He was working and supporting me and the baby. He wanted to leave the gang and to give our son a better life."

These sentiments were echoed by family members who saw a change in Hector after Yesenia became pregnant. His aunt in law Sonia Velasquez, remembered how determined Hector was to be a good father to his unborn child. Like the others mentioned earlier in the report she recalled that Hector was picked on when he was young. "He was extremely quiet, and he was so small that the others picked on him." She felt this influenced his association with the gangs, which she pointed out were prevalent in Brentwood. However, once Yesenia became pregnant, Hector just wanted to be a good father to his son.

Amy said that when she thinks about Hector, she sees his desire to be a good father. "He wanted to have a better life for his son," she recalled, adding that Hector was considering moving back to Houston because he felt it would be a better environment to raise his son. His stepfather, Jesus, remarked that for the last couple of years, before Hector was arrested, Hector's focus was on being with his girlfriend, spending time with his baby, and on getting employment. Hector indicated that he tried to make the best of whatever opportunities were at hand, even though, regrettably, such opportunities were affected by his limited educational and vocational skills.

Educational & Vocational History

Educational records confirm that Hector attended public schools in Houston, Texas, and in the Brentwood Union Free School District in Brentwood, New York. He attended the following schools: Braeburn Elementary School in Houston (1995-1999), South East Elementary School in Brentwood (1999-2000), Oak Park Elementary School in Brentwood (2000-2003), South Middle School in Brentwood (2003-2006 & 2007), Alief Middle School in Houston (2006), Alief Learning Center (2006), Freshman Center in Brentwood (2007-2008), Allen Residential School in Brentwood (2008),

and Ross High School in Brentwood (2008), from which he withdrew at age 18.

As noted earlier in this report, Hector's school performance was negatively affected by certain factors including: poor English language skills with a need for bi-lingual instruction; moving back and forth from Houston to New York; target of bullying; gang violence in schools that he attended; learning and emotional/behavioral difficulties; and the need to work while enrolled in school in order to help support himself. His school records indicate that he received some remedial education in the Brentwood School District (3rd/4th grade). He was held over at various times, for example in the 4th and 7th grades. Teachers' comments on his school records suggest that the language barrier as well as a shy and quiet demeanor impeded academic interactions; particularly in elementary school, even though he tried hard and was seen as having potential. In middle school, behavioral challenges, with instances of suspensions and juvenile detentions, impeded his educational growth. School records indicate that Hector, at age 16, was referred for a psycho-educational evaluation to help determine whether he had special education needs. However, it is not apparent from the records that such an evaluation was carried out. Two years later, he was out of high school without a diploma.

Hector reported that his job history began when he was 14 years old and working at a warehouse alongside his mother, loading and unloading trucks. He said further that at 16 years old he signed out of school and began working full time. He stated that most of his jobs were off the books. Social Security earning statements indicate that Hector earned a total of \$193.21 in 2007 when he would be 16 years old. There were no recorded earnings for the years 2008 & 2009, but for the years 2010-2012, there appears to be steady employment. He worked through an employment agency, Gotham Personnel LLC where he earned \$4,415.62; that same year he also worked at Kentucky Fried Chicken for a brief period and at Glen Wayne Wholesale Bakery where he earned \$7,282.51. His total earnings for 2010 were \$11, 712.49. For the year 2011, he earned a total of \$16, 314.44, of which \$15,278.49 was earned at US NONWOVENS Corp, a factory located in Brentwood.

Daniel Bond, a supervisor, recalled Hector as a very quiet and good worker. He remembered that he was the kind of kid who got along with everyone. While he was unaware of the reason Hector left the job, he remarked that should Hector reapply for a job he would be willing to re-hire him. It was the general consensus from everyone interviewed that Hector was dedicated to his job and saw working as the way to be a responsible father and son. Lilian remarked that she could rely on Hector to assist her financially in the home. "He was a good son to me," she remarked.

Medical History

Hector does not report any chronic medical problems. However, he has been treated for ailments resulting from accidents as well as assaults. He was treated at Memorial Hermann Southwest Hospital on June 4, 2006 for laceration to the forehead and eyebrow after falling off a dirt bike. Other medical records indicated that he received severe head injuries after being attacked by rival gang members. He was approximately 13 years old at the time.

Mitigation Factors

In reviewing Hector's social history, certain circumstances stand out as playing a significant role in helping to shape his psychosocial development and influence his choices. While the entirety of his history should be taken into consideration for purposes of mitigation, the following factors are here highlighted:

War Trauma's Impact on Family System

One risk associated with families exposed to war is the psychological trauma that can linger even years after the end of the war exposure. Unfortunately, too, this trauma can affect not only the family members who actually witnessed the war, but also succeeding generations within the same family as the traumatized emotions are passed on from parent to child to grandchildren. The El Salvador Civil War, in terms of historical context, was a pretty recent war, ranging from 1978 to 1992. Thus, to Salvadorians who experienced it, the carnage and devastation are not easily forgotten; though they may like to forget as is the case with Hector's family members, including his mother, who was a child when the war broke out. It is not easy to forget seeing relatives and neighbors kidnapped, raped and killed before one's eyes; or to live daily with the fearsome reality that the next time it could be you. Along with the fear comes the feeling of guilt as to why you are alive while your family member is dead; and whether you could have/should have done something to save your loved one.

Such psychological trauma can rip at the very ties that bind families together, as was the case with Hector's family. This of course leads to devastation and disruption of the family system that hitherto proved resilient in surviving more conventional hardships such as poverty. Significantly, Hector's family illustrates the dynamic of a family system traumatized by violence and forced from its moorings to lurch with such conflicting feelings as flight (migration/movements) vs. staying/returning home, and individual survival vs. family steadfastness. This traumatic upheaval in Hector's family, particularly the life of his mother, held ramifications for his physical, emotional, cognitive and social development even though he was born in the United States.

It should be noted, for instance that, as suggested by Lilian (Hector's mother) that the gang violence encountered by Hector in the United States held similarities to the war trauma she had to deal with as a child in El Salvador. In that vein, Hector's encounter with warring gangs, which victimized him and then forced him to choose sides, was devastating to his childhood (illustrating an extension of the trauma his mother had experienced and a sad turning point in his life).

Emotional Trauma Associated with Death of Friend

Hector's responses indicate that the death of his friend, Lazo, was indeed a moment of significant emotional rupture for him; whereby there was a sense of crisis as to the direction of his life. His answers indicate that he was devastated to the point of feeling unable to make a decision about the future of his life. He indicated feelings of depression as well as survivor's guilt, which can engender devaluation of one's own life as a means for compensating for the loss of the dead relative or friend. In such crisis, the absence of alternative role models or mentors, Hector could turn to a gang member. Instead, Hector became even more susceptible to the influence of the gang members who presented themselves as his sympathizers and protectors.

Head Injuries

As noted in this report, it was reported that Hector suffered injuries to his head at age 14, when he was beaten up and knocked unconscious. Furthermore, the reported details associated with the head injury, indicate the possibility of not only physical after-effects but also residual emotional trauma. As reported, the incident/head injury appeared to precipitate changes in Hector's mood and behavior.

Failure of Caregivers

The relationship between a child and primary care-giver, usually the mother, provides the foundation for the child's ability to form healthy relationships with others as he grows older. In Hector's case, the ability of his mother (Lilian) to provide that safe, nurturing relationship even during his infancy was significantly impaired. No doubt Lilian was confronted with difficult circumstances, including her own emotional struggles, which made it difficult for her to function as a mother.

However, this was hardly reassuring to a young child left on numerous occasions to wonder why his mother could not spend time with him; and felt as though he was an emotional and unwanted burden. Consequently, the insecurities he endured as a child put him at greater risk of emotional and social difficulties that resulted in misguided choices by his teenage years.

Abandonment by Father

The abandonment of a father can be devastating for a young child. A range of emotions, oftentimes unspoken, can adversely influence the child's functioning from one stage of development to the next. Such emotions may include depression, low self-worth, helplessness and identity crisis. It is understandable that the risk to the child is even more telling in a household that also lacks reliable alternatives by way of family members who can compensate for the loss of the father. Hector was caught in such a situation. It was a situation that did little to make him feel safe. Instead, it made him impressionable to the influences of gangs for example; which pressed him to see them like a 'family' that wanted to protect him.

Domestic Violence, Child Abuse & Neglect

As with many children who have had to suffer through domestic violence and being victims of abuse and neglect, Hector was put at significant risk. Such exposure formed early influences on Hector's emotional and social functioning, which undermined Hector's need to assimilate more appropriate means of conflict resolution.

Environmental Pressures

Reports indicate that Hector was a dovish child who was pressed into responding in accordance with the abuse, violence, gang culture, and other adverse activities that were prevalent in the communities he grew up in. It should be understood that Hector's first inclination was to resist the forces that tried to pull him in a wrong direction. However, his ability to resist was significantly harmed by the virtual lack of strong, reliable and protective factors both in the home; where there was limited supervision, and in the community where he was not even safe in school.

Frequent Moving

Having to move back and forth can be traumatizing and disruptive to a child's development. Hector had no choice in the matter, as he was moved around by his mother between Texas and New York. Such movements made it difficult for Hector to have a feeling of stability whether at home or in school. The instability also increased the risk of emotional and behavioral difficulties, with poor self-esteem that contributed to malleability and ill-advised associations.

Academic Failure

Hector was raised in circumstances that increased the risk of poor academic outcomes. Those circumstances included schools that were problematic due to the influence of gangs and thus hardly conducive to improving Hector's prospects. A culture that seemed to foster academic failure made him even more vulnerable to the delinquent alternatives. It was in school that Hector was bullied and pressured into joining a gang for his own protection. Under the circumstances, it was impressed upon Hector that academic learning was secondary to learning to survive a hostile environment.

Work History

Although events in Hector's life limited his employment opportunities, his reported work history indicates that he is not averse to being productive. His answers indicate that he can function in an environment that offers a safe and productive means of survival.

Family Ties

Given the drawbacks associated with the family system in which Hector was raised, his efforts to be a good father to his son is commendable. Reports from family members indicate that fatherhood was making a difference in Hector's life, as he was demonstrating increased motivation to set his life on a more positive path.

Age

Hector is 28 years old, and it appeared as if, prior to his arrest, he was learning to transition from troubled teenager to assuming responsibility for his actions. Hector grew up in circumstances whereby his emotional and intellectual growth was stymied by the slowness, at best, of caregivers to identify and show insight into his reactions to events around him. For example, family members thought little of the fact that Hector was as they say, "extremely quiet" in comparison to his peers; and also that he needed close personal attention from his teachers to help him academically. As noted in the report, the OCFS had to intervene when Hector was 11 years old and in need of eye glasses, which his family was neglecting to give him, even though his impaired vision was impeding his academic growth. It is reasonable to infer that had Hector been born and raised in more supportive and optimistic circumstances, his potential would have been valued sooner and led to better choices.

Conclusion

Hector Torres was born and raised in family and environmental systems that made him susceptible to certain risk factors. These risk factors include emotional trauma rooted in his family's exposure to war and traumatic episodes in his own childhood that have rendered physical and emotional harm. Hector's circumstances should not be discounted in assessing the effect upon his overall development and the choices with which he was confronted.

A motivational factor for Hector was the birth of his son. As seen by family members, Hector felt rejuvenated by his son's birth and he had begun to make an effort to turn away from the troubles of his adolescent years. His life is far from perfect, as, there are emotional wounds that have been crying out for attention and healing since early childhood. However, it is a life that has been shown to have potential. This is seen, for instance, in his ability to respond positively to supportive teachers in elementary school, his work history since age 16, and his efforts to be a "good father" to his son, despite the harmful impression of his own father abandoning him. Hector turned 28 years old this year. He has only just begun to learn to be a man. He does not deny that he made some extremely poor choices; but he also would like an opportunity to learn from his mistakes and to work at redemption if even for the sake of his innocent son.

See generally United States v. Aviles, No. 02 CR 999, 2005 WL 1660621, at *6 (E.D.N.Y. Jul. 12, 2005)("sentencing in this case should focus on the need 'to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.' 18 U.S.C. § 3553(a)(2)(D)").

We concede that Hector Torres has been convicted of serious crimes. However, he has generally comported himself well while in custody and is unlikely to recidivate. Hence it is respectfully

submitted, that after Booker, the Guidelines calculus can be outweighed by more compelling factors, such as are present here.

Recommendation

In sum, we submit that this Court should "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, and that a non-Guidelines sentence or downward departure below the applicable Guidelines range is warranted.

Respectfully,

/S/

Raymond L. Colón, Esq.

cc: AUSA John Durham